

## TRAINING MODULE 2

### STUDY PLAN

# Veterans Benefits: Definitions; General Provisions; Periods of War

#### Objective:

Become familiar with the various benefits administered by the U.S. Department of Veteran Affairs (VA), and to become familiar with the general provisions and definitions used in the context of these benefits. Also, become familiar with the various definitions of “wartime service” for purposes of different agencies. Additional definitions and more specific information are in the module for each particular benefit.

#### References:

Title 38, U.S. Code.

38 Code of Federal Regulations.

VA Pamphlet 80-06-01, *Federal Benefits for Veterans and Dependents*.

#### Instructions:

Study all reference materials available to become familiar with general provisions governing VA benefits, and the definitions of terms used in connection with adjudication of claims and awarding of benefits. Special attention should be given to the dates of various periods of war, and to distinguish benefits that require wartime service from ones that do not.

#### Summary:

THE U.S. DEPARTMENT OF VETERANS AFFAIRS, ITS ACTIVITIES, ORGANIZATION, AND the scope of benefits it administers are all authorized under various statutes enacted by Congress. Since 1958 these laws have been codified under Title 38 of the U.S. Code. 38 USC 501 gives the Secretary of Veterans Affairs the authority to promulgate such regulations as may be necessary to administer the law. The rules and regulations established for this purpose are codified in 38 Code of Federal Regulations.

By regulation, “VA” means all organizational units of the U.S. Department of Veterans Affairs. VA is the proper official abbreviation for the U.S. Department of Veterans Affairs in all contexts. [38 CFR § 1.9(b)(1)]

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In VA context, the term “**benefit**” can mean either a monetary payment or the furnishing of goods or services having a monetary value to or for an eligible veteran, veteran’s dependent, or veteran’s survivor. Monetary benefits include the Compensation and Pension programs for both living veterans and survivors, as well as Vocational Rehabilitation and the various education and training assistance programs. Furnishing of goods and services covers all aspects of VA medical care, as well as the VA Loan Guaranty and Insurance programs.

A “**veteran**” is a person who served in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable; or who died in active service, not as the result of willful misconduct. [38 CFR § 3.1(d)] “**Active military, naval, or air service**” means active duty, any period of active duty for training (Reserves) during which the individual was disabled or died from disease or injury incurred or aggravated in line of duty, and any period of inactive duty training (Reserves) during which the individual was disabled or died from an injury (traumatic) incurred or aggravated in line of duty, or from an acute myocardial infarction (heart attack), cardiac arrest, or cerebrovascular accident (stroke) which occurred during such training or while traveling to or from such training. [38 CFR § 3.6(a)] “**Active duty**” means full-time duty in the (U.S.) Armed Forces, other than active duty for training.

The “**Armed Forces**” are the U.S. Army, Navy, Air Force, Marine Corps and Coast Guard; also, commissioned officers of the Public Health Service and the Coast and Geodetic Survey and its successor agencies, the Environmental Science Services Administration and the National Oceanic and Atmospheric Administration; also, cadets attending the various service academies or preparatory schools. [38 CFR § 3.6(b)] The “**Reserves**” are the Reserve components of the Armed Forces, also the National Guard and Air National Guard of the United States. [38 CFR § 3.1(b), (c)] In addition, under provisions of Public Law 95-202 the Secretary of Defense and the Secretary of the Air Force have certified some 32 non-military organizations including the Women’s Air Force Service Pilots (WASPs), the American Oceangoing Merchant Marine, and the Alaska Territorial Guard as well as certain individual civilians, as having served in a capacity qualifying as “active military service” during World War II for purposes of establishing veteran status and eligibility for veterans’ benefits. [38 CFR § 3.7(x), (y)]

A discharge “under conditions other than dishonorable” is a discharge that is either “**Honorable**” or “**General, Under Honorable Conditions.**” [38 CFR § 3.12(a)] In addition, if an enlisted person is administratively separated for certain reasons (such as a voided enlistment because of misrepresentation of age), the discharge may be shown as “**Uncharacterized, Entry Level;**” this is also considered to be under conditions other than dishonorable. [38 CFR § 3.12(k)] An “Honorable” discharge fully entitles the veteran to any and all VA benefits for which he/she would be eligible. A discharge shown as “General, Under Honorable Conditions” or “Uncharacterized (Entry Level)” will also entitle the veteran to most (but not all) VA benefits. In all other cases, VA must determine whether the discharge was issued under conditions other than dishonorable, provided the discharge was not for one of the reasons listed in 38 USC 5303 as a bar to all VA benefits.

“**In line of duty**” means that a disease or injury was incurred or aggravated while the veteran was on active military, naval, or air service, unless the disease or injury was the result of the veteran’s own willful misconduct. Line of duty is not met if at the time the disease or injury was incurred or aggravated the veteran was avoiding duty by desertion, or was AWOL which materially interfered with the performance of military duty; if the veteran was confined under sentence of

a court-martial involving an unremitted dishonorable discharge; or was confined under sentence of a civilian court for conviction of a felony. [38 CFR § 3.1(m)]

**“Willful misconduct”** means conscious, deliberate, and intentional wrongdoing or known prohibited action, with knowledge of, or wanton and reckless disregard of, the probable consequences. Willful misconduct is not an issue unless it is the proximate and immediate cause of injury, disease, or death. Since November 1990 any disability or death arising from the abuse of alcohol or drugs, whether immediate or remote, is by law considered to be the result of willful misconduct and not in line of duty, unless the abuse of alcohol or drugs is shown to be a secondary result (symptom) of a non-misconduct service-connected disability. [38 CFR 3.1(n)]

A veteran's dependent or survivor is a spouse, child, or parent. A **“spouse”** is a person of the opposite sex whose marriage to the veteran was valid under the laws of the place where the parties resided at the time of marriage, or the laws of the place where the parties resided when the right to benefits accrued. [38 CFR §§ 3.1(j), 3.50(a)]

A **“child”** is an unmarried person under age 18 who is the veteran's natural (biological) child, whether legitimate or illegitimate; or who was legally adopted before age 18 by the veteran; or who is the legitimate or illegitimate child of the veteran's spouse, and who became a member of the veteran's household before age 18 and continues to be a member of the household or was so at the time of the veteran's death. The term also includes an unmarried child over age 18 who is pursuing a course of instruction at an approved educational institution, but not beyond the child's 23rd birthday; or an unmarried child over age 18 who became disabled and permanently incapable of self-support (helpless) prior to the child's 18th birthday. [38 CFR § 3.57]

A **“parent”** is the veteran's natural mother or father; or adoptive mother or father; or foster mother or father, who stood in the relationship of parent (*in loco parentis*) before the veteran's 21st birthday and for at least one year before the veteran entered active service. If two or more persons stood in such a relationship for a year or more, the person who last stood in that relationship before the veteran entered active service will be recognized as the “parent” for the purpose of VA benefits. [38 CFR § 3.59]

For persons who first entered service after September 1980 (enlisted) or October 1981 (officers), eligibility for most VA benefits requires that the veteran have served a minimum period of active duty. The minimum active duty service requirement is 24 continuous months or the full period for which the person was called to active duty, whichever is less. Minimum active duty service requirements do not apply if the veteran is discharged because of a service-connected disability; or has a service-connected disability that would have warranted a disability discharge; or has established compensable service connection for any disability, regardless of whether it might have warranted discharge; or if the veteran is released from service early for specified reasons (e.g., hardship, convenience of the Government, etc.). [38 CFR § 3.12a]

Minimum active duty service requirements do not apply to the provision of any benefit related to a service-connected disability or death, to include the requirement for 90 days of continuous active service for eligibility for presumptions of service connection for chronic or tropical diseases. They also do not apply to insurance matters or to veterans' re-employment matters.

Minimum active duty service requirements specifically apply to the length of service requirements for nonservice-connected disability or death pension based on service during the

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Gulf War Era and for Loan Guaranty claims based on service since 1980 (1981 for officers), and are separate and distinct from the basic length of service requirements for these benefits. Meeting the minimum active duty service requirement will generally (but not always) also satisfy the length of service requirements for either pension or for Loan Guaranty. However, if the veteran was discharged from service for any of the exclusions to the minimum active duty service requirement *other than* service-connected disability, then the basic 90-day length of service requirement for pension or for Loan Guaranty eligibility still applies.

VA monetary benefits are exempt from taxation and from liens by creditors. They may not be assigned, except as specifically provided by law. In general, they may not be attached, levied, or seized under any equitable or legal process whatever, either before or after they are received by the beneficiary. [38 USC 5301(a)] There are some specific exceptions, however—VA benefits payments may be attached by the Internal Revenue Service (IRS) for nonpayment of back (Federal) taxes; they may be offset to collect benefits overpayments and other debts owed the United States; and, under certain circumstances, compensation payments (only) may be garnished in accordance with an order from a state court of competent jurisdiction for payment of alimony and/or child support. This last requires that several criteria are *all* met: (1) the veteran is eligible to receive military retired pay; (2) there is a proper state court order of alimony and/or child support; (3) there is a total waiver of retired pay in favor of VA compensation; and (4) the veteran is not eligible for concurrent receipt under CRDP (see Training Module 4, Section 2). [42 USC 659(a); 5 CFR § 581.103(c)(7)]

Certain benefits such as disability or death pension require that the veteran have “wartime service,” or be a “veteran of a war.” For VA purposes, it is not required that the veteran have actually served in combat, or have even served overseas; it is only required that he or she served at least one day during a time period designated by VA as “wartime.” Note that some of the designated periods were not declared wars (by Congress).

The Office of Personnel Management (OPM) has different requirements from VA for assigning veterans' preference for employment by the Federal Government and other purposes, based on wartime service. OPM may simply require that the veteran have served in a campaign or expedition for which a campaign badge or expeditionary medal has been authorized (some State veteran's benefits also have this requirement). Note that service in a campaign or expedition for which a campaign badge or expeditionary medal has been authorized (e.g., the invasions of Grenada and/or Panama) is *not* synonymous with “wartime service” for VA purposes, even if the veteran was wounded in action or injured in the course of such campaign or expedition, if that campaign or expedition did not take place during a time period designated by VA as “wartime.”

Those periods recognized by VA as constituting “wartime service” beginning after 1900 are:

- ***Mexican Border Period:*** May 9, 1916 to April 5, 1917, if the veteran served in Mexico, on the borders thereof, or the waters adjacent thereto.
- ***World War I:*** April 6, 1917 through November 11, 1918, inclusive. If the veteran served with U.S. forces in Russia, the ending date is April 1, 1920. Service after November 11, 1918 and before July 2, 1921 is considered World War I service if the veteran also served in the active military, naval, or air service after April 5, 1917 and before November 12, 1918.

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- ***World War II:*** December 7, 1941 through December 31, 1946, inclusive. If the veteran was in service on December 31, 1946, continuous service before July 26, 1947 is considered World War II service.
- ***Korean Conflict:*** June 27, 1950 through January 31, 1955, inclusive.
- ***Vietnam Era:*** February 28, 1961 through May 7, 1975, inclusive, if the veteran served in-country in Vietnam during that period. In all other cases, August 5, 1964 through May 7, 1975, inclusive.
- ***Persian Gulf War:*** August 2, 1990 through a (future) date to be prescribed by Presidential proclamation or law.  
[38 USC 101(6)–(12), (30), (33); 38 CFR § 3.2(c)–(i)]

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### **Study Questions:**

Using the assigned references and reading materials, answer the following questions:

1. A person who served only in a Reserve component of the Armed Forces (no active duty) is considered to be as much a veteran as a person whose service was on active duty. (Y/N)
2. If a veteran was on active duty on December 31, 1946, what is considered to be the ending date of World War II service?
  - a. March 31, 1947
  - b. July 26, 1947
  - c. October 12, 1947
  - d. November 11, 1947
3. To be considered a veteran, a person's separation from active service must have been:
  - a. Honorable
  - b. General
  - c. Uncharacterized (entry level)
  - d. Any of the above
4. Medical care is considered a "VA benefit." (T/F)
5. If a person on active duty while on authorized leave is under the influence of alcohol and injured in a traffic accident, those injuries are considered to be the result of that person's own willful misconduct, even if the person was not at fault in causing the accident. (T/F)
6. A member of the National Guard who is injured during the mandatory initial period of active duty for training is considered to be a veteran. (T/F)
7. A "helpless child" is defined as one who becomes permanently incapable of self-support due to mental or physical disability before the age of:
  - a. 15
  - b. 18
  - c. 21
  - d. 25

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8. Veteran was in the Army from August 1, 1960 to July 31, 1964. He did not serve outside the U.S. Does he have wartime (Vietnam) service? (Y/N)
9. Only a veteran's natural parents may be recognized as dependents for VA purposes. (T/F)
10. A person on active duty is AWOL from his/her post because of being confined in a civilian jail for grand theft. While in jail, the service person develops a severe infection, which leaves permanent residual disability. Was that infection incurred in line of duty? (Y/N)